

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 WILLIAM G. MOORE,

10 Petitioner,

11 v.

12 UNITED STATES OF AMERICA,

13 Respondent.
14

CASE NO. C11-5121BHS

ORDER TO SHOW CAUSE

15 This matter comes before the Court on William G. Moore's ("Moore") petition for
16 writ of mandamus (Dkt. 1) and motion to compel (Dkt. 2). The Court has considered
17 Moore's petition, the motion to compel, and the remaining record, and hereby denies the
18 motion to compel and orders Moore to show cause why his petition should not be dismissed
19 for the reasons stated herein.

20 As an initial matter, the Court has concluded that Moore's motion to compel
21 should be denied as the motion is essentially a supplement to his petition in that he seeks
22 the same mandamus relief in the motion to compel that is sought through his petition.
23 Therefore, the Court will consider the motion to compel as a supplement to his petition
24 rather than a motion for separate relief.

25 Moore's petition seeks mandamus relief from the Court under 28 U.S.C. § 1361, to
26 compel United States Attorney Jenny A. Durkan to perform duties Moore alleges are
27 owed to him. *See* Dkts. 1 & 2. The Ninth Circuit has held that "[m]andamus is an
28

1 extraordinary remedy and is available to compel a federal official to perform a duty only
2 if: (1) the individual's claim is clear and certain; (2) the official's duty is
3 nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt; and (3)
4 no other adequate remedy is available." *Patel v. Reno*, 134 F.3d 99, 931 (1997). Having
5 reviewed Moore's petition and supplement thereto, the Court concludes that he has failed
6 to present a claim that is clear and certain or show that Durkan's duty is nondiscretionary,
7 ministerial, and so plainly prescribed as to be free from doubt. Therefore, the Court
8 concludes that Moore should file additional briefing stating why the Court should not
9 dismiss his petition for failure to meet the elements required in order to be entitled to
10 mandamus relief.

11 Therefore, the Court hereby **ORDERS** that:

12 1. Moore's motion to compel (Dkt. 2) is **DENIED** and will be considered a
13 supplement to his petition; and

14 2. Moore may file additional briefing to show cause why his petition should
15 not be dismissed, as discussed herein, on or before **April 8, 2011**.

16 DATED this 24th day of March 2011.

17
18 

19 BENJAMIN H. SETTLE
20 United States District Judge
21
22
23
24
25
26
27
28